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Supreme Court, U.S.
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No. 02-

IN THE

Supreme Court of the United States

JOHN NEILL,

Petitioner,

v.

PAUL H. WEINSTEIN,
ADMINISTRATIVE JUDGE,
CIRCUIT COURT OF MONTGOMERY COUNTY, MD,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is it a violation of a Citizen's 14th Amendment Rights for a Federal or State Law to force him or her to serve on a jury against his/her will, under threat of Fine or Imprisonment?

2. Is the practice of using Involuntary Juries such a threat to a prospective litigant's Due Process as to require this court to abolish such juries in the United States of America?

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Petitioner John Neill respectfully prays that this Court will grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered on May 1, 2002.

OPINIONS BELOW

The May 1, 2002 opinion of the 4th Circuit Court of Appeals, which was an unpublished per curiam opinion is set out in Appendix A. to this petition. The memorandum opinion of the Southern District of Maryland is set out in Appendix B.

JURISDICTION

The decision of the court of appeals was entered on May 1, 2002. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

STATUTES AND REGULATIONS INVOLVED

(Federal Statutes)

Juror Selection Act of 1968 - 28 U.S.C. § 1861. Declaration of policy

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

(Maryland Statutes)

Article - Courts and Judicial Proceedings § 8-102.

(a) When a litigant in a court of the State is entitled to trial by a petit jury and when a person accused of a criminal offense is presented to a grand jury, the jury shall be selected at random from a fair cross section of the citizens of the State who reside in the county where the court convenes.

(b) Every citizen of this State who maintains his name on the roll of voters registered for State elections has:

(1) The opportunity to serve on grand and petit juries; and

(2) The obligation to serve when summoned as a juror.

Article - Courts and Judicial Proceedings § 8-104.

(a) The jury commissioner or the clerk of the court shall select the names of prospective jurors from among:

(1) Those persons at least 18 years old whose names appear on the voter

(2) The list of individuals at least 18 years old who have been issued a driver's license by the Motor Vehicle Administration;

(3) The list of individuals at least 18 years old who have been issued an identification card by the Motor Vehicle Administration; and

(4) Additional sources permitted by a plan adopted under § 8-201 of this title.

(b) Volunteers for jury service shall be refused, and recommendations, if made, may not be accepted.

STATEMENT OF THE CASE

Petitioner is a resident of Montgomery County, Maryland and was summoned for jury duty in the Maryland State Circuit Court for Montgomery County. He filed suit in Federal District Court in order to have the Maryland State legislation included in Md Code Ann., § 8-102, § 8-104, and § 8-201 *et seq.*, Cts & Jud Proc. Art (1974, 1998, Repl Vol.) declared unconstitutional along with the Federal Statutes - The Juror Selection Act of 1968 - 28 U.S.C. 1861-1869. The petitioner maintains that

since both sets of statutes force Citizens to serve as jurors who may not wish to serve, and prevent any Citizen from volunteering for juror service who may wish to serve, the result in each instance is a violation of the U. S. Constitution.

Question 1:

Is it a violation of a Citizen's 14th Amendment Rights for a Federal or State Law to force him or her to serve on a jury against his/her will, under threat of Fine or Imprisonment?

The set of juror selection statutes comprising the Juror Selection Act of 1968 - 28 U.S.C. § 1861-1869 and copied by the Maryland State Legislature in § 8-102, § 8-104, along with the Jury Selection Statutes Md. Code Ann., § 8-201 et seq., Cts & Jud. Proc. Art (1974, 1998, Repl Vol.) force citizens to serve on juries who do not wish to do so. For the juror who does not wish to serve, jury duty amounts to a form of incarceration.

The juror is detained for all the time the court is in session and in addition the time the jury spends in deliberations, as well as being forcibly separated from home, family, and friends should sequestering of the jury be ordered. It is a denial of a citizen's Personal Freedom and Liberty. The petitioner contends that a citizen's Personal Freedom and Liberty should be recognized as a "Fundamental Right" entitled to special protection under the Fourteenth Amendment. The citizen should decide whether or not he or she will serve on a jury not the Judicial Branch of the United. States Government. In addition the result is a marginal finder of fact whose main priority is a restoration of liberty and not a fair and unbiased verdict.

The American Jury System is derived from English Common Law. One of the earliest references to Jury Duty

occurred during the reign of Henry II in the Constitutions of Clarendon written in 1164.

> ". . . the sheriff being requested by the bishop, shall cause twelve lawful men of the neighborhood or town to swear in the presence of the bishop that they will manifest the truth of this matter, according to their conscience. ."

§ 6 Constitutions of Clarendon (1164).

The Magna Carta also included

> "No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, no will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

§ 39 Magna Carta (1215).

The petitioner notes that in England, in the year 1164, the "sheriff shall cause the twelve lawful men" to serve, thus apparently denying them a right to decline juror service. He is hopeful that in America, in the year 2002, citizens have a right to not serve. He believes this right is included in the Substantive Due Process rights granted to all Americans by the Fourteenth Amendment.

Although in the year 1946, the U.S. Supreme Court found that,

> "Jury service is a duty as well as a privilege of citizenship; it is a duty that cannot be shirked on a plea of inconvenience or decreased earning power."

Thiel v. Southern Pac. Co., 328 U.S. 217, 222, 224. (1946).

However in 1997, there appeared to be hope. In the case of *Washington v. Glucksberg* this court discussed substantive due process analysis. "First we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in

this Nation's history and tradition, "*id.*, at 503 (plurality opinion); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937).

Second, we have required in substantive due process cases a "careful description" of the asserted fundamental liberty interest. *Flores*, *supra*, at 302; *Collins*, *supra*, at 125; *Cruzan*, *supra* at 277-278. Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decisionmaking," *Collins*, *supra* at 125, that direct and restrain our exposition of the Due Process Clause. As we stated recently in *Flores*, the Fourteenth Amendment "forbids the government to infringe. . .'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." 507 U.S., at 302. *Washington v. Glucksberg* 521 U.S. 702, 720-721 (1997).

In regard to the first part of the test for a fundamental right, the petitioner contends that Personal Freedom and Liberty is particularly fundamental to the citizens of this Nation with vast roots in the history of this country. When this country was founded in the time of The Revolutionary War, Liberty was a major theme and was included in the Declaration of Independence's words "Life, Liberty, and the Pursuit of Happiness", Patrick Henry's slogan of "Liberty or Death", the symbol of the "Liberty Bell", and "the Liberty Tree of Connecticut". The Civil War was fought to ensure the "Personal Freedom and Liberty" of all citizens. The Statue of Liberty is a further symbol of the place Liberty holds in the "traditions and conscience of our people". The National Anthem includes the phrase "Land of the Free. . ." and the Pledge of Allegiance includes the words ". . .With Liberty and

Justice for All". The President of the United States is often referred to as the "Leader of the Free World". No nation in the world places more emphasis on Freedom and Liberty than the United States of America.

Involuntary Jury Duty interferes with what people mean when they use the words "Freedom" and "Liberty". The American Heritage Dictionary defines Liberty as 1. a.) The condition of being free from restriction or control. b.) The right and power to act, believe, or express oneself in a manner of one's own choosing. c.) The condition of being physically and legally free from confinement, servitude, or forced labor. The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company. Thus the Citizen is being denied Personal Freedom and Liberty when forced to serve on a jury panel should they not wish to serve.

Further indications that this Involuntary Jury System involves a violation of fundamental rights is due to the fact that the citizen is placed under the restriction and control of the Judicial Branch of this Government. (The law-abiding American Citizen is treated by the Judiciary in a similar fashion to the way law-breakers are treated.) A citizen's right to control the government and not the other way around was included in the Declaration of Independence "The right to rule is derived from the consent of the governed". Lincoln's Gettysburg Address discussed "Government of the People, by the People, and for the People". An Involuntary Jury System is not "by the People" since it is not in their control. It is a denial of liberty and "neither liberty nor justice will exist" if it is allowed to continue.

The Second part of the Substantive Due Process analysis requires a "careful description" of the asserted fundamental liberty interest. *Flores*, *supra*, at 302; *Collins*, *supra*, at 125; *Cruzan*, *supra* at 277-278. *Washington v. Glucksberg* 521 U.S.

702, 721 (1997). The petitioner contends that legislation that interferes with a citizen's "Personal Freedom and Liberty" includes any law that requires a citizen to be at a particular location, at a particular time and requires them to perform a particular activity. Generally, American Citizens must be allowed to go where they please, when they please and engage or not engage in any legal activities they wish. As with any fundamental right this can be abridged when legislation is "Narrowly tailored to serve a compelling state interest." *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992), etc.

In regard to consideration of this right, legislation that mandated a draft into the Armed Forces, would appear to be one of the few situations where the legislature has interfered with Citizens' Personal Freedom and Liberty. If this Court found such a fundamental right the result would be judicial review of any future law requiring Citizens to serve in the Armed Forces against their will.

James Madison wrote in The Federalist No. 51 regarding the goals of the founding fathers

> ". . .by so contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places . . ."

Paragraph 1, Federalist No. 51, Feb 6, 1788.

Thus, this could in the future, prevent such upheaval as occurred during the Vietnam War, when Americans rebelled against being forced to serve in the Military and fight in a war that did not appear to be compelling enough to justify the denial of Personal Freedom and Liberty to those who were drafted. Conversely, in a situation like World War II, a Court could find that there was ". . . A Compelling State Interest . . ." in having a military draft and approve such legislation in that case. This would be an improvement to the Case Law on Military Drafts including the *Selective Draft Law Cases* 245

U.S. 366 (1918), having the Court impose some restraint on ability of the Legislature to impose a draft, instead of giving the Legislature the right to institute a draft at its sole discretion.

When considering the Constitutionality of Legislation, this Court should also be guided by to what extent the legislation is the will of the people and what extent is does not appear to be the will of the people. Regarding the Juror Selection Statutes of Maryland, the statistics included in Appendix C, appear to indicate that this is not the will of the Citizens of the petitioner's Circuit Court (Montgomery County, MD). During the years of 1991 to 2000, close to half or less than half of the jurors summoned to appear to have done so.

Year	Summons Sent	Jurors Present
1991	30,075	17,787
1992	31,759	16,817
1993	32,906	17,137
1994	32,660	15,137
1995	32,775	17,130
1996	34,290	16,076
1997	36,952	18,850
1998	38,791	18,271
1999	39,805	19,409
2000	41,250	17,970

The petitioner realizes that some may say that an Involuntary Jury System is necessary for the administration of justice and that this is a ". . .A Compelling State Interest. . .". Thus even if a fundamental right is violated the legislation would still be constitutional. The petitioner is asking for a Right of Refusal, that each Citizen be given an opportunity to decline jury service at some point, during the process, before presentation at the Courthouse is required. As the above statistics demonstrate, many citizens are not showing up now, so in many ways, it is already a Voluntary Jury System.

Some members of this Court may fear that if Citizens are given are Right of Refusal, so many more of them, would decline service so that there would not be enough jurors to accommodate the Court System. To offset this the petitioner suggests that Courts be required to give Citizens an opportunity to volunteer to for jury duty. Indeed, the words of the Federal Legislation - Juror Selection Act of 1968 state ". . . It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States . . ." 28 U.S.C. § 1861 (1968). The opportunity the legislation speaks of is only to be placed in universe of those who could be the selected.

The petitioner believes Citizens should be able to "volunteer" to be included in those selected to be presented to a court as juror candidates. Court personnel could interview these volunteers to insure they are doing so for good motives. The effect would be to minimize those who may not wish to serve from having to do so. The petitioner also does not understand why an experienced juror is inferior to in inexperienced one. If a court finds a good juror, they should be able to use him or her many times. Why hope that chance will find a juror just as good? Of course any juror is subject to the challenges and approvals of the contending lawyer/advocates. (The petitioner is using the word "juror" to describe juror candidates before voir dire.)

Even if this Court did not find that the Fourteenth Amendment requires a Right of Refusal - a requirement that Courts solicit volunteers and include volunteers as juror candidates, would help to reduce those forced to serve against their will. A volunteer, who had served on several or more juries would have a resume of prior cases to present to contending counsel. There are a lot of civic-minded citizens of all ethnic groups, who would be excellent and scrupulously fair, finders of fact. Any litigant seeking justice would be very

happy to have them as jurors. The petitioner sees a juror pool of these volunteers along with those randomly selected, who accepted the opportunity to serve as a juror.

Question 2

The attitude of a portion of Involuntary Jurors toward the job of fact finder is hostile. The result is a chance of poor justice for any litigant seeking a remedy before any of these courts. The Involuntary Juror is asked questions by a judge empowered to throw him or her in jail (for contempt of court), thus one wonders how truthful such a citizen will be in this situation.

In a worse case scenario an angry citizen might hold out against a majority of fellow jurors and delay or possibly prevent a verdict. Conversely, often inconvenienced, involuntary juries give verdicts as fast as possible, so they can finally leave this forced incarceration and return to their own lives. Thus not giving enough thought to what are often complex cases.

Additional conduct of jurors serving against their will, includes: arguing with the judge, making unwanted bodily sounds during testimony, falling asleep, not paying attention, talking with fellow jurors, etc., etc. Under a voluntary system these worse jurors of all - those who do not wish to serve are removed from the juror pool. It is the best solution for judge, lawyer/advocate, parties to litigation, jurors and citizens.

The courthouse as a result of its function will not always be a happy place. However there is no reason that the part concerned with juror selection should be such a tense and unhappy place. The citizens being held there have not committed any crimes, yet to a person who does not want to be there, it is very similar to a penitentiary. Also courts try to spend as little money as possible in administering their juries. Thus only very cheap and Spartan accommodations are

afforded the jurors in jury waiting rooms. This is because it is an involuntary system, no matter how badly the citizens are treated, they will still have to show up or face fine or imprisonment. The courthouse would be a better environment for justice if only voluntary jurors were serving.

CONCLUSION

For the above reasons, a writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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APPENDIX

BEST AVAILABLE COPY

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-2485

John Neill,
Plaintiff - Appellant

versus

Paul H. Weinstein, Administrative Judge,
Circuit Court of Montgomery County,
Defendant -Appellee

Appeal from the United States District Court
for the District of Maryland at Greenbelt.
Alexander Williams, Jr., District Judge
(CA-01-2333-AW)

Submitted April 25, 2002

Decided: May 1, 2002

Before WILLIAMS and KING, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

PER CURIAM:

John Neill appeals the district court's order denying relief on his 42 U.S.C.A § 1983 (West Supp. 2001) complaint. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Neill v. Weinstein, No. CA-o1-2333-AW (D.Md. filed Nov. 14, 2001; entered Nov. 15, 2001). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

November 14, 2001

At Greenbelt
Clerk U.S. District Court
District of Maryland
By_____Deputy

JOHN NEIL
Plaintiff

vs.

THE HONORABLE PAUL H. WEINSTEIN,
Administrative Judge, Circuit Court of Montgomery County
Defendant

Civil Action No. AW-01-CV-2333

ORDER

UPON CONSIDERATION of the arguments made in support of, and opposition to Defendant's Motion to Dismiss, IT IS this 13th day of November, 2001 by the United States District Court for the District of Maryland, hereby **ORDERED:**

1. That Defendant's Motion to Dismiss [7-1] BE, and the same hereby IS **GRANTED.**
2. That Plaintiff's Motion for a Restraining Order BE, and the same hereby is **DENIED** as Moot;

3. That Defendant's Motion for Protective Order [10-1] BE, and the same hereby is **DENIED** as Moot;

4. That Plaintiff's Motion for Summary Judgment [11-1] BE, and the same hereby is **DENIED** as Moot;

5. That the Clerk of the Court **CLOSE** this case.

6. That the Clerk of the Court mail copies of this Order to all counsel of record.

_____

Alexander Williams, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

November 14, 2001

At Greenbelt
Clerk U.S. District Court
District of Maryland
By_____Deputy

JOHN NEIL
Plaintiff

vs.

THE HONORABLE PAUL H. WEINSTEIN,
Administrative Judge, Circuit Court of Montgomery County
Defendant

Civil Action No. AW-01-CV-2333

MEMORANDUM OPINION

Plaintiff, John Neil, resident of Montgomery County, brings this action against Defendant, the Honorable Paul H. Weistein, Administrative Judge for the Circuit Court of Montgomery County, Maryland, requesting that this Court enjoin the Circuit Court of Montgomery County from compelling him to appear for jury duty. Pending before the Court is Defendant's Motion to Dismiss pursuant to Fed. R. Civ.Proc. 12(b)(6). No hearing is deemed necessary. *See* Local Rule 105.6 (D. Md.). Finding that Plaintiff has failed to state a

claim upon which relief can be granted, the Court GRANTS Defendant's Motion to Dismiss.

BACKGROUND

In early 2001, Defendant, Judge Paul Weinstein, on behalf of the Montgomery County Circuit Court, sent Plaintiff a jury service questionnaire. Plaintiff completed the questionnaire and returned it as instructed. Thereafter, Plaintiff received a summons from the Circuit Court of Montgomery County to appear for jury duty. Plaintiff immediately brought this suit requesting injunctive relief, arguing that section 8-102,[1] section 8-103,[2] and Maryland's jury selection process, Md. Code Ann.,

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[1] Section 8-102, entitled "Declaration of policy" provides, in pertinent part,

> (b) *Opportunity and duty to serve.* – Every citizen of this State who maintains his name on the roll of voters registered for State elections has:
>
> (1) The opportunity to serve on grand and petit juries; and
>
> (2) The obligation to serve when summoned as a juror.

[2] Section 8-103, entitled "Discrimination prohibited" provides,

> A citizen may not be excluded from service as a grand or petit juror in the courts of the State on account of race, color, religion, sex, national origin, or economic status.

Although not specifically identified, Plaintiff also suggests a violation of section 8-104 which provides:

> (a) *Sources.* – The jury commissioner or the clerk of the court shall select the names of prospective jurors from among:
>
> (1) Those persons at least 18 years old whose names appear on the voter registration lists;
>
> (2) The list of individuals at least 18 years old who have been issued a driver's license by the Motor Vehicle Administration;
>
> (3) The list of individuals at least 18 years old who have been issued an identification card by the Motor Vehicle Administration; and
>
> (4) Additional sources permitted by a plan adopted under

§ 8-201 *et. seq.*, Cts & Jud. Proc. Art. (1974, 1998, Repl. Vol.), violate the Thirteenth Amendment prohibition against involuntary servitude and Fourteenth Amendment guarantees of due process and equal protection of the laws.

Plaintiff is self employed as an "Oracle Software Developer" and contends that any time spent on jury duty will prevent him from earning a living. He also argues that:

> A voluntary jury system is better for all concerned. The judges will have less unruly and angry involuntary jurors to contend with. The accused will have more attentive and more deliberate jurors. One wonders how many verdicts were rendered in haste as involuntary jurors anxious to return to their jobs, take the quickest way out. Finally under the voluntary system the jurors would have to be treated better or no one would volunteer. Thus, the $15.00 dollar a day wage insult, could be raised to [a] more reasonable hourly wage ($7.50 an hour?). And the juror waiting room could be re-furnished and added to with various diversions – to give the waiting jurors a more pleasant time and accord them the respect Americans are entitled to while performing their civic duty.

Defendant argues that, even if Eleventh Amendment immunity allows for the relief requested, the Court must dismiss the case because, Plaintiff has not identified any conduct of Defendant under color of State law that is depriving Plaintiff of a federally protected right. The Court evaluates the respective arguments below to determine whether an Order

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§ 8-201 of this title.

(b) *Volunteers, recommendations.* – Volunteers for jury service shall be refused, and recommendations, if made, may not be accepted.

dismissing the complaint is appropriate.

ANALYSIS

A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint, not the facts that support it. *Neitzeke v. Williams,* 490 U.S. 319, 326-27, 109 S.Ct. 1827,1832 (1989). A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations, *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957).

42 U.S.C. section 1983 ("section 1983") creates a cause of action against any person who, acting under color of state law, abridges rights created by the Constitution and the laws of the United States.[3] In that context, a motion to dismiss requires a two-part analysis. First, because § 1983 is not itself a source of substantive rights, the Court must determine whether Plaintiff appropriately alleges the deprivation of a right "secured by the Constitution and the laws" of the United States. *Albright v. Oliver,* 510 U.S. 266, 271, 114 S.Ct. 807,811 (1994). Second, the court must determine whether Plaintiff appropriately alleges

---

[3] 42 U.S.C. § 1983 provides,

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

a deprivation occurred "under color of any statute." *West v. Atkins,* 487 U.S. 42, 48, 108 S.Ct. 2250, 2255 (1988). Plaintiff alleges a deprivation of rights secured by the Thirteenth and Fourteenth Amendments.

A. *Fourteenth Amendment: Due Process and Equal Protection Clauses*

The Fourteenth Amendment provides, in pertinent part, that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws." U.S. Const. amend. XIV, §1. To prevail on a substantive due process or equal protection claim under § 1983, a plaintiff must establish, as a threshold matter, that he has a protected right that the Fourteenth Amendment protects. Plaintiff asserts a violation of the Equal Protection Clause because, as he sees it, the juror selection process "creates a minority class – those unfortunate enough to be selected for a long trial." He also asserts a violation of the Due Process Clause, contending that the selection process infringes on his constitutionally protected liberty interest in earning a living.

Plaintiff fails to state a claim under the Fourteenth Amendment. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr. Inc.,* 473 U.S. 432, 439, 105 S.Ct. 3249, 3254 (1985) (quoting *Plyler v. Doe,* 457 U.S. 202,216, 102 S.Ct. 2382 (1982)). Because the Equal Protection Clause does not prohibit all forms of discrimination, a classification will be upheld "so long as it bears a rational relation to some legitimate end." *Romer v. Evans,* 517 U.S. 620, 631, 116 S.Ct. 1620 (1996). If, however, the legislation burdens a fundamental right or targets a suspect class, the Court will uphold it only if it is narrowly tailored to serve a compelling state interest. *See Cleburne,* 473 U.S. at 440, 105

S.Ct. 3249; *see also Plyler v. Moore,* 100 F.3d 365, 373 (4th Cir.1996). Similarly, the Due Process Clause provides heightened protection against government interference with certain fundamental rights and liberty interests, *see Reno v. Flores,* 507 U.S. 292, 301-302, 113 S.Ct. 1439, 1446-1447 (1993), but where no fundamental rights are involved, the Court will uphold the legislation if it is reasonably related to a legitimate government interest. *G.D. Searle & Co. v. Cohn,* 455 U.S. 404, 102 S.Ct.1137 (1982).

Here, Plaintiff does not allege that the State has or intends to discriminate against him because of his race, religion, color or sex. Nor does he allege an infringement of a fundamental right protected by the Due Process Clause.[4] Thus, the Court applies the rational basis test. In doing so, the Court finds that the Maryland statutory scheme for selecting jurors is rationally related to the State's purpose of providing for the proper execution of justice in the state. The statutory scheme, modeled after similar federal legislation,[5] embodies every citizen's Sixth Amendment right to an impartial jury, and works to protect

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[4] Among the rights recognized by the Supreme Court as fundamental are the right to marry, *Loving v. Virginia,* 388 U.S. 1, 87 S.Ct. 1817 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 62 S.Ct. 1110, (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska,* 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923): *Pierce v. Society of Sisters,* 268 U.S. 510, 45 S.Ct. 571 (1925); to marital privacy, *Griswold v. Connecticut,* 381 U.S. 479, 85 S.Ct. 1678 (1965); to use contraception, *Eisenstadt v. Baird,* 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972); to bodily integrity, *Rochin v. California,* 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952), and to abortion, *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 112 S.Ct. 2791 (1992).

[5] *See* Jury Selection and Service Act of 1968, 28 U.S.C. §§1861-69; *see also Hunt v. State,* 345 Md. 122, 143, 691 A.2d 1255, 1265 *cert. denied,* 521 U.S. 1131, 117 S.Ct. 2536 (1997) (noting that Maryland's jury selection act is modeled after the federal Jury Selection and Service Act).

significant rights under the Maryland Declaration of Rights.[6] In the balance, it also protects every citizen's rights under the Fourteenth Amendment, including each citizen's procedural due process rights by providing the potential juror an opportunity to be heard where circumstances of hardship, extreme inconvenience or public necessity may prevent the citizen from serving. *See* § 8-210.

B. *Thirteenth Amendment: Involuntary Servitude*

Plaintiff also fails to state a violation of the Thirteenth Amendment. The Thirteenth Amendment provides, in pertinent part,

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

U.S. Const. amend. XIII, § 1. The primary purpose of the Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War. *United States v. Kozminski,* 487 U.S. 931, 942, 108 S. Ct. 2751, 2760 (1988) (*quoting Butler v. Perry,* 240 U.S. 328, 332, 36 S. Ct. 258 (1916)); *see also United States v. Shackney,* 333 F.2d 475, 485 (2d Cir. 1964). The prohibition against involuntary servitude is not, nor should it be, so rigorous as to prohibit all forms of labor that a citizen is compelled to perform for the benefit of another or society in general. *See Immediato v. Rye Neck School Dist.* 73 F. 3d 454, 459 (2nd Cir. 1996) (finding mandatory community service program not involuntary servitude); *United States v. 30.64 Acres of Land,* 795 F.2d 796, 800-01 (9th Cir. 1986) (finding attorney pro bono work not involuntary servitude, reasoning that attorney can choose not to

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[6] Md. Decl. of Rights, art. 23, provides for the right to a jury trial in civil actions.

practice law); *United States v. Redovan,* 656 F.Supp. 121, 128-29 (E.D. Pa. 1986), *aff'd,* 826 F.2d 1057 (3d Cir. 1987) (finding doctor pro bono services not involuntary servitude). As the Supreme Court observed in *Kozminski, supra,* 487 U.S. at 944-45, 108 S.Ct. at 2760,

> the prohibition against involuntary servitude does not prevent the State or Federal Governments from compelling their citizens, by threat of criminal sanction, to perform certain civic duties. *See Hurtado v. United States,* 410 U.S. 578, 589, n. 11, 93 S.Ct. 1157, 1164, n. 11, 35 L.Ed.2d 508 (1973) (jury service); *Selective Draft Law Cases,* 245 U.S. 366, 390, 38 S.Ct. 159, 165, 62 L.Ed. 349 (1918) (military service); *Butler v. Perry,* [240 U.S. 328, 36 S.Ct. 258 (1916)] (roadwork).

The Court finds that the statutory scheme as applied in this case does not place Maryland's system for selecting jurors in the realm of involuntary servitude as defined in the Thirteenth Amendment. The statute allows for names of potential jurors to be taken from the voter registration records and the Department of Motor Vehicle records, permitting only those persons that voluntarily registered to vote or apply for a driver's license to be selected. Plaintiff and others in the State of Maryland, may decide that they do not want to perform their civic duty as a juror and, therefore, may decide not to register to vote or apply for a driver's license. As seen above, the selection process is not arbitrary or irrational, and a significant state interest is served where the State, as a matter of public policy, determines that every Maryland citizen has the "obligation to serve when summoned a s a juror." *See* § 8-102 (b) (2). The specific hardship expressed by the Plaintiff is better left to the Maryland state court, and Plaintiff's public policy suggestions for changing the statute are more appropriately reserved for the Maryland Legislature.

For the foregoing reasons, the Court GRANTS the Defendant's Motion to Dismiss. An Order consistent with this opinion will follow.

Alexander Williams, Jr.
United States District Judge

November 13, 2001
Date

APPENDIX C

CIRCUIT COURT FOR MONTGOMERY COUNTY
MARYLAND
JUDICIAL CENTER
MARYLAND AVENUE, ROOM 301
ROCKVILLE, MARYLAND 20850
TEL (240)777-9100

December 11, 2001

Mr. John Neill
4515 Willard Ave # 1818-S
Chevy Chase, MD 20815

Dear Mr Neill:

Please find attached the information that is readily accessible in the Circuit Court data base relative to trial duration jury duty statistics. The number of summons sent and the number of citizens appearing are as follows:

Year	Summons Sent	Jurors Present
1991	30,075	17,787
1992	31,759	16,817
1993	32,906	17,137
1994	32,660	15,137
1995	32,775	17,130
1996	34,290	16,076
1997	36,952	18,850
1998	38,791	18,271
1999	39,805	19,409
2000	41,250	17,970

The other information you requested is not available without programming costs associated with data extraction.

Thank you for your civic interest in the judicial system.

Very Truly Yours,

s\Pamela Q. Harris
Court Administrator